

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

STATE OF INDIANA,
ex rel. Steve Carter, Attorney General of Indiana,
and the CITY OF EAST CHICAGO,
ex rel. Steve Carter, Attorney General of Indiana,

Plaintiffs,

vs.

Cause No.

ROBERT A. PASTRICK; TIMOTHY W. RAYKOVICH;
EDUARDO MALDONADO; FRANK KOLLINTZAS;
ADRIAN SANTOS; JOE DE LA CRUZ;
JOSE VALDEZ, JR.; PEDRO PORRAS;
GEORGE E. WEEMS; FRANK MISKOWSKI;
JOEL MARKOVICH; KIMBERLY K. ANDERSON;
JAMES HAROLD FIFE, III;

A & A ENTERPRISES; ACE ENTERPRISE;
A-1 DAVE'S TREE SERVICE, INC.,
d/b/a DAVE'S TREE SERVICE;
B & S CONSTRUCTION; CALUMET CONCRETE &
MASONRY, INC; D/S COMMERCIAL EQUIPMENT &
CONSTRUCTION; GARCIA LE & ASSOCIATES, LLC.,
d/b/a GREAT LAKES ENGINEERING, LLC.;
H & Y MAINTENANCE CO., INC.;
J.G.M. ENTERPRISES, INC.; RESIDENTIAL
CONSTRUCTION SERVICE, INC., a/k/a
RESIDENTIAL ROOFING & CONCRETE, INC.;
RIETH-RILEY CONSTRUCTION CO., INC.;
ROGERS & SONS CONSTRUCTION, INC.;
T.R.I., INC.; TRIPLE J CONSTRUCTION;
WINDSTORM ENTERPRISES, INC.;
ST. PAUL FIRE AND MARINE INSURANCE;

and DEFENDANTS A through Z,

Defendants.

PLAINTIFFS' MOTION FOR STAY OF PROCEEDINGS

Plaintiffs, State of Indiana, *ex rel.* Steve Carter, Attorney General of Indiana, and the City of East Chicago, *ex rel.* Steve Carter, Attorney General of Indiana, by counsel, move this Court to stay all proceedings, including but not limited to motions and discovery, in this case pending the outcome of the criminal prosecution by the United States Attorney for the Northern District of Indiana, *United States of America v. Frank Kollintzas, et. al., Cause No. 3:03 CR 91-RM*, involving substantially the same acts and transactions by the several common Defendants. In support of this Motion Plaintiffs submit the following:

1. Plaintiffs filed their complaint simultaneously with the filing of this motion.
2. The Federal Bureau of Investigation first brought Plaintiffs attention to the possibility of wrong doing by the defendants in February 2000 when it suggested that the State Board of Accounts ("SBOA") should focus on a 1999 sidewalk program during the conduct of its examination of East Chicago's records for the Audit Period ended December 31, 1999.
3. Because the City's records were incomplete and had to be augmented, the SBOA was unable to issue findings critical of the 1999 sidewalk program until it conducted its audit for the Audit Period ending December 31, 2000. It then certified that report to the Indiana Attorney General on November 6, 2001.
4. In an effort to obtain cooperation in the civil prosecution of Plaintiffs' claims, the Attorney General met with Joseph Van Bokkelen, United States Attorney for the Northern District of Indiana, on December 14, 2001. Subsequent to that meeting Van

Bokkelen requested that the Plaintiffs' forestall filing their civil claims until after his Office made the information related to the sidewalk program public.

5. On September 5, 2003, a Federal Grand jury indicted Defendants Kollintzas, De La Cruz, Santos, Maldonado, Porras and Valdez on public corruption charges (18 U.S.C. §§ 2, 371, 666, 1001, 1341, 1343, 1346, 1503 and 1623). These indictments were supplemented by the indictments of Councilman Randall Artis and Terrance Artis, the owner of Defendant A & A Enterprises, on May 7, 2004.

6. As of this date, the grand jury that handed down those indictments continues its investigation and indictments of other, as yet uncharged, named defendants may well be forthcoming before its investigation is complete.

7. The indictments already issued demonstrate that the criminal prosecutions currently pending and any potential prosecutions resulting from the grand jury's continuing investigation are based upon the same facts, transactions, and circumstances as the Complaint in this civil matter.

8. Further, many of the documents and records from the Individual Defendants and the Company Defendants critical to the civil, as well as the criminal case, were submitted to the federal grand jury and now enjoy the protection of Federal Rule of Criminal Procedure 6(c) thereby making these essential documents unavailable to both the Plaintiffs and the Defendants until resolution of the criminal case.

9. Although Plaintiffs have no wish to prejudice either the Federal Government or the defendants, Plaintiffs can no longer afford to wait to file their civil complaint until the completion of the federal investigation and prosecutions since to do

so would potentially subject Plaintiffs to statute of limitations and due diligence problems.

10. A court has the “discretion to stay civil proceedings, postpone discovery, or impose protective orders and conditions ‘when the interests of justice seem () to require such action, sometimes at the request of the prosecution, ... sometimes at the request of the defense.’” *Securities and Exchange Commission v. Dresser Industries, Inc.* 628 F.2d 1368, 1375 (D.C.Cir.), cert. denied, 449 U.S. 993, 101 S.Ct. 529, 66 L.Ed. 2d 289 (1980) (quoting *United States v. Kordel*, 397 U.S. 1, 12 n. 27, 90 S.Ct. 763, 770, n. 27, 25 L.Ed. 2d 1 (1970) (citations omitted) *Afro-Lecon, Inc. v. United States*, 820 F.2d 1198, 1202 (Fed. Cir. 1987).

11. The similarity of the relevant facts, transactions and circumstances, the need to avoid prejudice to both the Defendants and the Federal Government as the criminal investigation and prosecutions are completed, the fact that many of the documents necessary to the prosecution of this civil complaint are in the hands of a federal grand jury, the reduction of duplicative effort by the court and all parties, and the promotion of judicial economy all converge to demonstrate that the interests of justice would best be served by the grant of a stay in these civil proceedings.

12. Plaintiffs believe considerable savings of judicial time and energy could be achieved in the event that the criminal convictions were obtained by the Federal Government, since under the doctrine of *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331-32 (1979) and decisions following, including *County of Cook v. MidCon Corp.*, 773 F.2d 892, 906 (7th Cir. 1985), the finding of the criminal jury would be binding on the defendants convicted in these proceedings and could not be disputed.

13. Plaintiffs' Brief in Support of Motion to Stay Proceedings, filed contemporaneously with this Motion, more fully sets forth the reasons this Court should exercise its discretion and grant a stay in this matter.

WHEREFORE, Plaintiffs, State of Indiana, *ex rel.* Steve Carter, Attorney General of Indiana, and the City of East Chicago, *ex rel.* Steve Carter, Attorney General of Indiana, by counsel, respectfully request that the Court stay these civil proceedings in their totality, including any motions or discovery, until resolution of *United States of America v. Frank Kollintzas, et. al., Cause No. 3:03 CR 91-RM* and any other criminal proceedings resulting from the grand jury's on-going investigation.

Respectfully Submitted,

STEVE CARTER
Attorney General of the State of Indiana

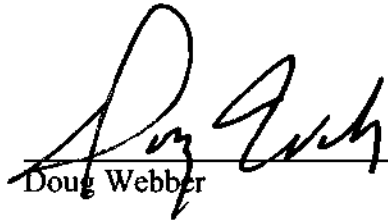
A handwritten signature in black ink, appearing to read "Lawrence J. Carcare II", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was filed simultaneously with the Complaint and Summons to be served therewith to each named Defendant on this 3rd day of August 2004.



Doug Webber

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